

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Joy Almeyda	Team: Team # 4	CCRB Case #: 200717516	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 11/27/2007 11:40 PM	Location of Incident: West 141st Street & Chisum Place	Precinct: 32	18 Mo. SOL 5/27/2009	EO SOL 5/27/2009	
Date/Time CV Reported Sat, 12/01/2007 12:01 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 12/05/2007 1:10 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Christoph Siani	04029	919712	032 PCT
2. POM William Butler	00691	933664	032 PCT
3. POM Aaron Thorn	17386	907442	032 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Carlos Guzman	14120	943336	032 PCT
2. POM Delwyn Davis	24664	932525	032 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Christoph Siani	Abuse: Sgt. Christopher Siani authorized the stop of the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.POM Aaron Thorn	Discourtesy: PO Aaron Thorn spoke rudely to § 87(2)(b)	
C.POM William Butler	Abuse: PO William Butler frisked § 87(2)(b)	
D.POM William Butler	Abuse: PO William Butler searched § 87(2)(b)	
E.SGT Christoph Siani	Abuse: Sgt. Christopher Siani frisked § 87(2)(b)	
F.SGT Christoph Siani	Abuse: Sgt. Christopher Siani searched § 87(2)(b)	
G.SGT Christoph Siani	Abuse: Sgt. Christopher Siani searched the vehicle in which § 87(2)(b) was an occupant.	

Synopsis

On November 27, 2007, at approximately 11:40 PM, § 87(2)(b) was driving in his silver BMW with his friend § 87(2)(b) when officers stopped his vehicle at West 141st Street and Chisum Place in Manhattan (**allegation A**). Four officers, identified as Sgt. Christopher Siani, PO Delwyn Davis, PO William Butler and PO Aaron Thorn approached his vehicle. PO Butler and PO Thorn approached the driver's side and Sgt. Siani and PO Davis approached the passenger side. PO Butler asked § 87(2)(b) for his information and § 87(2)(b) asked why the officers had stopped him. PO Butler again asked § 87(2)(b) for his license and § 87(2)(b) explained that he would provide it; he just wanted an explanation for the stop. At that point, PO Thorn stepped forward and allegedly said "Give him your fucking license" (**allegation B**). § 87(2)(b) refused and he was instructed to exit the vehicle. § 87(2)(b) initially refused to exit the vehicle, but upon being asked again, he complied, as did § 87(2)(b). Once outside of the vehicle, PO Butler allegedly frisked and searched § 87(2)(b) (**allegations C and D**) and § 87(2)(b) thought that § 87(2)(b) was also frisked and searched (**allegations E and F**). Afterwards, both § 87(2)(b) and § 87(2)(b) were brought to the back of the vehicle while PO Butler and Sgt. Siani searched it (**allegation G**). After concluding the search, the officers returned to their vehicle and ran § 87(2)(b)'s information through the system. PO Thorn returned to § 87(2)(b) and asked for his registration, and when § 87(2)(b) asked where the "CPR" was, PO Thorn began to curse and allegedly said "Give me your damn registration" (**also allegation B**). PO Davis eventually explained to § 87(2)(b) that they had stopped his vehicle because they suspected it was stolen. The officers returned § 87(2)(b)'s information and released him without arresting or summoning him or § 87(2)(b).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b)

§ 87(2)(b) filed a complaint about this incident by telephone with IAB on December 1, 2007, and it was forwarded to the CCRB on December 5, 2007 (see enclosure # 7a-7d). § 87(2)(b) was interviewed about the incident at the CCRB on December 17, 2007 (see enclosure # 8a-8e). § 87(2)(b) is § 87(2)(b).

On November 27, 2007, at approximately 11:40 PM, § 87(2)(b) was driving his friend § 87(2)(b) home in his silver BMW when he looked in his mirror and saw flashing lights behind him. § 87(2)(b)'s license plate is from Pennsylvania. He pulled over at West 141st Street and Chisum Place in Manhattan, rolled down his window, turned off his car and kept his hands in his lap. Four officers, identified through the investigation as Sgt. Christopher Siani, PO Delwyn Davis, PO William Butler and PO Aaron Thorn, all got out of a black Chevy Impala and approached § 87(2)(b)'s vehicle. PO Butler and PO Thorn walked to the driver's side. PO Davis and Sgt. Siani walked to the passenger side. PO Butler was at § 87(2)(b)'s window as Sgt. Siani was at § 87(2)(b)'s window. PO Butler asked § 87(2)(b) for his license and § 87(2)(b) asked why the officers stopped him. PO Butler again asked § 87(2)(b) for his license. § 87(2)(b) stated that he did not have a problem providing his ID, and that he just wanted to know why the officers had stopped him. PO Thorn replied: "Give him your fucking license" or "Give him your damn license." § 87(2)(b) was certain that PO Thorn cursed while giving the directive, but he could not recall his exact words. § 87(2)(b) refused to produce his ID, stating that he did not know who the officers were. PO

Thorn responded that they were the police, and he and PO Butler pulled out their shields, which were on chains under their shirts. § 87(2)(b) remarked that they did not look like police. § 87(2)(b) provided his ID while he was still in his car. He retrieved his ID from his wallet that was in his back right pocket. PO Butler and PO Thorn instructed him to get out of his vehicle. Instead of complying, § 87(2)(b) again asked why he was stopped, and in response, he was again told to exit his vehicle.

§ 87(2)(b) exited his vehicle, as did § 87(2)(b) even though he was not convinced the men were officers. PO Butler placed § 87(2)(b) against the car and began to frisk and search him. § 87(2)(b) described being patted down, and once PO Butler confirmed that § 87(2)(b) did not have anything that would “stick” him, he entered both of § 87(2)(b)'s pants pockets and both jacket pockets. § 87(2)(b) had money including bills and change, in his right front pocket. In his left pocket he had a toothpick, albuterol, and lip balm. § 87(2)(b) was not sure if PO Butler took anything out of his pockets. § 87(2)(b) saw that Sgt. Siani was dealing with § 87(2)(b) and though he did not see what occurred, he assumed Sgt. Siani frisked and searched § 87(2)(b). PO Butler instructed § 87(2)(b) to stand by PO Thorn and PO Davis by the back of the car. Sgt. Siani said the same to § 87(2)(b). PO Butler and Sgt. Siani searched inside of § 87(2)(b)'s vehicle; they searched inside the glove compartment, under the seats, throughout the back seat, and inside § 87(2)(b)'s bags in the front and back seats. § 87(2)(b) asked PO Thorn why they stopped him and was told to “shut up.” § 87(2)(b) informed the officers that he wanted to make a phone call since he did not know who they were. PO Thorn stated that they had already told him they were the police and that he should not call anyone. § 87(2)(b) had already dialed 911 and spoke with the 911 operator, explaining the situation. As he was on the phone, he overheard § 87(2)(b) ask Sgt. Siani on the other side of the car if they were from the 32nd Precinct. Sgt. Siani responded yes. § 87(2)(b)'s phone then died and he was disconnected from the 911 operator.

All of the officers returned to their vehicle. § 87(2)(b) believed they did this to run his license. While they were in their vehicle, § 87(2)(b) and § 87(2)(b) remained standing outside. The officers returned and PO Thorn asked § 87(2)(b) for his registration. § 87(2)(b) asked him where the officers’ “CPR” was (meaning Courtesy, Professionalism and Respect), and PO Thorn, who was “irate”, began cursing, though § 87(2)(b) could not recall his exact words, and said “Give me your damn registration.” § 87(2)(b) replied that PO Thorn could not speak to him disrespectfully, since he was not speaking disrespectfully towards the officers, especially when he still was not certain that they were police. PO Thorn said that they were the police, and again instructed § 87(2)(b) to provide his registration. § 87(2)(b) gave his registration to PO Thorn, who returned to the police vehicle. PO Davis remained with § 87(2)(b) so § 87(2)(b) said to him that he still has not been provided with a reason for the stop. PO Davis told § 87(2)(b) that his car was “debadged.” § 87(2)(b) asked what that meant, and PO Davis explained that § 87(2)(b) was driving a BMW that did not have the proper insignias on it. He further explained that when people steal cars, they “debadge” them. § 87(2)(b) explained that his car was “aftermarket,” which is the addition of non-factory parts, accessories, and upgrades to a motor vehicle. PO Davis went on to say that § 87(2)(b) had “cracks” in his car, which § 87(2)(b) interpreted to mean crack-cocaine. § 87(2)(b) became angry, because he felt that this was a stereotypical remark and that the officers were profiling him. § 87(2)(b) told PO Davis that he is employed and works nearly seven days a week. PO Davis remarked “You know how many times we hear that from people?” PO Butler and PO Thorn returned and informed § 87(2)(b) that his license plate was not coming up in the system. § 87(2)(b) explained that he had received traffic tickets at home, and that when he had checked online following the tickets, “everything checked out.” The officers told § 87(2)(b) to get out of there, and that he was “unruly” or something to that effect. The officers returned his paperwork and left the scene. Neither § 87(2)(b) nor § 87(2)(b) were arrested or issued any summonses.

§ 87(2)(b) stated that PO Thorn was the only one to curse and it was not “a big curse-fest.” He felt PO Thorn was “antsy” and blurted out the curses as he was giving § 87(2)(b) directives. He also explained that though he originally stated that PO Butler threw him against his car, he did not want to lie and he wanted to clarify that PO Butler actually just placed him against his car. He described PO Butler as a short white male, approximately 5 feet tall, with sandy blond short hair. He described PO Thorn as a black male, approximately 6 feet tall, with gold teeth. He described PO Davis as a black male, approximately 5’10,” and heavyset. He described Sgt. Siani as a young, lean male in his mid 20’s. He thought he would be able to recognize the officers from photographs.

§ 87(2)(b) believed that the officers had no reason to stop and search him and felt that they racially profiled him. He denied ever reaching for anything while seated in the car after being stopped, namely his glove compartment or bags. All of his information was in his wallet, which was in his right back pocket. § 87(2)(b) stated that at one point, PO Butler told him that they stopped his vehicle because they had seen the black bags in the car. § 87(2)(b) responded that they could have just asked what was in them and PO Butler replied that if he had asked, if § 87(2)(b) had had a gun in there, he could have pulled the gun out on them.

In the course of the investigation, § 87(2)(b) revealed that one hour before the above incident, PO Carlos Guzman and PO Stewart Montilla of the 32nd Precinct stopped § 87(2)(b)'s vehicle. Though § 87(2)(b) was frisked and issued a summons for reckless driving, he was not interested in filing a complaint about that incident. § 87(2)(b) stated that while he thought the summons may have been excessive, the officers did not disrespect him during that incident, and provided him with an explanation for their actions. He explained that if his actions constituted a traffic infraction, than he would accept that, and he was not going to debate that at the CCRB.

Photo Arrays:

§ 87(2)(b) viewed two sets of photo arrays at the CCRB on January 29, 2008 (enclosure # 9a-9d) and another on May 13, 2008 (enclosure # 10a-10k). In the January viewing, § 87(2)(b) identified PO Butler as the officer who asked him out of the vehicle, and PO Thom as the black officer with gold teeth who cursed at him. He was 50% sure that Sgt. Siani was on the passenger's side of the vehicle and searched the vehicle with PO Butler. Although § 87(2)(b) viewed photos of PO Davis and PO Guzman, he did not identify either officer. During the May viewing, § 87(2)(b) contradicted his prior statements about who had frisked and searched him. After the viewing, he was contacted by telephone and reconfirmed that PO Butler was the officer who ordered him out of the car and frisked and searched him.

Results of Investigation

Witness Statement:

While § 87(2) was a witness to this incident and also a victim, he chose not to cooperate with this investigation. When § 87(2)(b) filed this complaint, he only provided § 87(2)(b) first name and he did not provide any contact information for him. Instead, § 87(2)(b) stated that he would speak with § 87(2) and see if he wished to take part in the complaint. On the date that § 87(2)(b) was interviewed at the CCRB, he stated that he had spoken with § 87(2) and § 87(2) planned to join him for the interview. However, § 87(2) did not appear at the CCRB.

§ 87(2)(b) was later contacted by telephone on December 28, 2007, to obtain § 87(2)(b) information. § 87(2)(b) stated that he had attempted to contact § 87(2) a couple of times, but § 87(2) was not returning his calls. When asked if he would provide § 87(2)(b) number so the agency could attempt to contact him, § 87(2)(b) refused to do so, stating that he would leave it up to § 87(2) in regard to whether he wished to cooperate or wished to have his contact information given out. Furthermore, while a UF-250 was filled out in regard to § 87(2) neither his name nor any of his contact information was listed. Instead, the areas simply said "Refused." As such, this agency could not contact § 87(2) directly and his statement was not obtained.

Identification of Officers Interviewed:

PO Guzman and PO Davis were identified via the stop and frisk reports that they filled out with regard to their respective incidents. Sgt. Siani, PO Thorn and PO Butler were identified via roll call as being partnered with PO Davis during this incident (see enclosure # 16a-16l). All officers confirmed their general involvement in the incident.

Officer Statements:
PO Delwyn Davis:

PO Davis filed nearly identical **stop and frisk reports** for § 87(2)(b) and § 87(2)(b). § 87(2)(b)'s report states that the reason § 87(2)(b)'s vehicle was stopped was because of a possible "GLA" vehicle, furtive movements and actions indicative of casing a victim or location (enclosure # 18d-18e). The additional reasons for the stop were because the area has a high incidence of "reported offense," and "evasive, false or inconsistent responses" to officers' questions. The report states that § 87(2)(b) was frisked and searched and the reason for the frisk was "furtive movements" and the reason for the search was a "hard object." PO Davis noted down that § 87(2)(b) was "irate," and that § 87(2)(b) responded to the officers during the stop with the phrase, "I'm just saying." No contraband was found during this stop and § 87(2)(b) was released without being arrested or issued a summons.

§ 87(2)(b) stop and frisk report included an additional factor for the reason for the stop (enclosure # 18f-18g). PO Davis marked "report from victim/witness/officer," his demeanor was "nonplussed," rather than "irate," and PO Davis did not write down any remarks § 87(2)(b) made during this incident.

The **handwritten stop and frisk report** confirms that PO Davis checked the box showing that § 87(2)(b) was searched (enclosure 18h-18i). It indicates that the reason for the search was a hard object in the form of a cell phone. The handwritten and the computer generated stop and frisk reports are consistent.

PO Delwyn Davis was interviewed at the CCRB on April 25, 2008 (enclosure # 13a-13d) and again on August 12, 2008 (see enclosure # 13e-13f). PO Delwyn is a § 87(2)(b). He stated that on November 27, 2007, he worked the hours of 1730x0205 and was assigned to anti-crime with Sgt. Siani, PO Butler and PO Thorn. He was dressed in plainclothes and assigned to an unmarked motor vehicle. His memo book states; "2340- car stop @ 141+§ 87(2)(b)

On November 27, 2007, PO Davis was on patrol with Sgt. Siani, PO Thorn and PO Butler when they saw a vehicle that they believed to possibly be stolen. PO Davis explained that they had run the license plate on the vehicle and there was no record of it being registered in the system. He also stated that the vehicle's license plate did not have expiration tags, and that the "badge" markings on the car, which identify what type of car it is, were missing, which is characteristic of stolen cars. The officers stopped the vehicle and approached it, with PO Thorn and PO Davis on the driver's side and Sgt. Siani and PO Butler on the passenger side. PO Davis remembered that there was the driver, § 87(2)(b) and possibly two passengers, in the vehicle. He did not recall if there were any bags in the car.

PO Thorn asked § 87(2)(b) for his identification and even though PO Davis could not hear the specifics of the conversation, he thought § 87(2)(b) either refused to provide it or could not find it. § 87(2)(b) seemed "agitated," which can be characteristic of someone who has stolen a car. § 87(2)(b) questioned the officers' identification and whether or not they were in fact police officers. PO Davis was positive, however, that at least PO Thorn had his shield out and that Sgt. Siani informed § 87(2)(b) that he was an NYPD sergeant. § 87(2)(b) was still agitated and combative, so the officers had § 87(2)(b) and his passenger(s) step out of the car. PO Davis explained that the officers removed the people from the car because § 87(2)(b) was agitated and the car had tinted windows, which could compromise security.

PO Thorn possibly frisked § 87(2)(b) before he was brought to the rear of the car, where PO Davis also frisked him. PO Davis frisked his waist area, because § 87(2)(b) was wearing a bulky jacket where a weapon could be concealed. He did not know if Sgt. Siani frisked § 87(2)(b). The passenger(s) was also frisked. Though he did not recall who conducted the frisk of the passenger(s), PO Davis knew that he did not participate. PO Davis recalled that a passenger was also in a bulky winter jacket. Nothing was found on either individual. PO Davis informed § 87(2)(b) that his car was "debadged," and this resolved the situation. PO Davis stated that he thought the passenger(s) was calm during this incident, and he was not sure if he spoke with him. PO Davis thought that the officers verified that the car belonged to

§ 87(2)(b) via the computer system and his paperwork, and he was released without being arrested or issued a summons.

PO Davis stated that he could not hear the specifics of the conversation § 87(2)(b) had with other officers. He remembered so much of the incident because § 87(2)(b) was combative and because people do not “usually come at you that way once you identify yourself as a police officer.” PO Davis denied officers using any profanity. He denied anyone searching § 87(2)(b) or removing anything from his pockets, despite being shown the UF-250 which he filed, stating that § 87(2)(b) was searched. PO Davis stated that the computerized form shown was not the original, and that he did not recall searching § 87(2)(b). PO Davis stated that he could not recall specifically if there were any bulges in § 87(2)(b)'s jacket or if he ever pulled at his clothes. PO Davis made no mention of the vehicle being searched. When asked, he stated that he did not recall it. When asked if that meant he had not searched the vehicle, PO Davis stated that he would not have searched the vehicle.

PO Davis was re-interviewed at the CCRB on August 12, 2008. He was shown a copy of the handwritten stop and frisk report, indicating that § 87(2)(b) had in fact been searched. He reiterated that he did not recall § 87(2)(b) ever being searched. However, he stated that if the UF-250 indicated that he was searched, then he must have been. Based on the UF-250, he assumed that the reason for the search must have been a cell phone, since it was listed as the cause. He did not recall who searched § 87(2)(b) but knew that he did not search him. When asked if any other object that might have been removed would have been listed on the UF-250, PO Davis stated that if it was of “some significance,” he would have listed it, but as far as he knew, he listed the cell phone and that was the reason for the search.

Sgt. Christopher Siani:

Sgt. Christopher Siani was interviewed at the CCRB on April 18, 2008 (see enclosure # 12a-12c). PO Siani is § 87(2)(b). He stated that on November 27, 2007, he worked the hours of 1726x0210 and was assigned to anti-crime with PO Butler, PO Davis and PO Thorn. He was dressed in plainclothes and assigned to an unmarked motor vehicle. He did not have any entries in his memo book in regard to this incident.

On November 27, 2007, Sgt. Siani was on patrol with PO Davis, PO Butler and PO Thorn when they stopped a vehicle on Chisum Place and 141st Street in Manhattan. Sgt. Siani could not recall if they stopped the vehicle because of a traffic infraction or because they were specifically looking at the car for a robbery or some type of crime. All four officers exited their vehicle and approached the stopped vehicle, with two officers on each side. Sgt. Siani stated that he could not recall which officers went to which side, but he thought he was on the driver's side. The officers approached the vehicle and asked the driver, § 87(2)(b) for his paperwork. Instead of providing it, § 87(2)(b) was “defiant,” and kept questioning the officers as to why they stopped him. He also pulled on the collar/front area of his jacket, though Sgt. Siani instructed him to stop moving his hands.

Given § 87(2)(b)'s demeanor and his actions with his jacket, Sgt. Siani wondered if § 87(2)(b) had something in his jacket and was possibly trying to distract the officers with his “agitated” manner. § 87(2)(b) and his passenger were both instructed to get out of the car, which they did. Sgt. Siani noticed “bulk” in the left breast pocket of § 87(2)(b)'s jacket, but did not provide a description of the bulge. Sgt. Siani initially stated that, [we] searched to see what he was tugging at” but subsequently described that the bulge was frisked. Although Sgt. Siani stated that he did not remember if he removed the object, he was adamant that § 87(2)(b) was not searched. Sgt. Siani believed that the object turned out to be a cell phone or something similar, but not a weapon. Sgt. Siani also did not recall who frisked § 87(2)(b) but conceded that it may have been him since he recalled going to the left pocket to identify the object. When shown a copy of § 87(2)(b)'s UF-250 which said that he was frisked and searched, Sgt. Siani stated that he did not know why it was filled out that way as he was not searched. The passenger of the vehicle was also frisked, though Sgt. Siani did not recall by whom.

After the frisks were concluded, both men were brought to the back of the car, while an officer or officers, Sgt. Siani did not recall who, briefly searched § 87(2)(b)'s vehicle for any weapons. Sgt. Siani

stated that he did not recall exactly where the search took place, but that it was only the lungeable areas. He stated that the areas around and under the front seats, and the center console, were searched so that when the passengers returned to the vehicle, they would not be able to grab a weapon. Sgt. Siani denied anyone searching the trunk of § 87(2)(b)'s car, but he could not recall if the back seat area was searched or if there were any bags on the back seat.

While the males were standing at the back of the car, § 87(2)(b) called 911 about the officers because he was angry and felt the stop was unwarranted. Sgt. Siani went over the radio to Central and explained that they had a car stop at that location. After the vehicle search was concluded, both men were allowed to return to the vehicle. Sgt. Siani instructed his officers to fill out stop and frisk reports, and § 87(2)(b) and his passenger were released from the scene. They were not arrested or issued any summonses.

Sgt. Siani stated that he has never heard of the term “debadged” before, and could not recall the specific reason for the stop. He explained that he only “vaguely” recalled this incident as they perform numerous car stops and nothing stood out about this incident except that both men were argumentative with the officers and § 87(2)(b) called 911. He stated that throughout the incident, § 87(2)(b) was screaming and yelling that the car stop was “bullshit,” and that the officers had the wrong guys. Sgt. Siani did not recall if § 87(2)(b)'s ID was ever run in the system.

PO Aaron Thorn:

PO Aaron Thorn was interviewed at the CCRB on May 7, 2008 (see enclosure # 14a-14e). PO Thorn is a black male with black hair and brown eyes. He is 6'2" and weighs 215 pounds. He stated that on November 27, 2007, he worked the hours of 1730x0205 and was assigned to anti-crime with Sgt. Siani, PO Butler and PO Davis. He was dressed in plainclothes and assigned to an unmarked motor vehicle. He did not have any entries in his memo book in regard to this incident.

On November 27, 2007, PO Thorn was on patrol with PO Butler, PO Davis and Sgt. Siani when they stopped a vehicle at West 141st Street and Chisum Place in Manhattan. PO Thorn stated that he did not recall why they stopped the vehicle, but it may have been for a traffic infraction. All four officers exited their car and approached the vehicle, which had two or three people in it. PO Thorn thought he and PO Butler approached on the driver's side, and PO Butler spoke with § 87(2)(b) since normally vehicle operators deal with one another. He thought Sgt. Siani and PO Davis approached the passenger side.

PO Thorn assumed PO Butler asked the driver for his license and registration. He could not recall if there was a problem with obtaining the information. Soon after they stopped the vehicle, however, one of the individuals got on his phone and called 911, stating that he was stopped by people who said they were the police but he was skeptical of this. PO Thorn thought that Sgt. Siani had to radio to Central that they had the car stopped at the location. The passenger, identified through the investigation as § 87(2)(b) was making movements in the vehicle, which PO Thorn described as “maybe possibly” trying to hide something or place something under his seat. Seeing this, Sgt. Siani motioned to his officers to remove the passengers from the vehicle, which they did. PO Thorn thought that the passengers questioned why they had to be removed. The passengers exited the car and they were “frisked and everything.” PO Thorn could not recall if he or PO Butler frisked § 87(2)(b). He stated that the frisk yielded nothing, and to his knowledge, they were not searched.

The passengers were moved to the bumper of their car while officers searched their vehicle. PO Thorn stated that he could not recall who searched the car, but both the front and back of the car were searched. He stated that the reason for the search was because there had been a lot of movement inside the car, so the officers were searching to see if § 87(2)(b) was trying to hide something or get rid of something. He stated that the officers searched the vehicle for their safety. Nothing was found in the vehicle and the passengers were allowed to return to the car. PO Thorn did not know if the men's identifications were run, but he knew they were released and he did not think they were arrested or issued a summons.

PO Thorn described the civilians as “agitated” or “confrontational,” and explained that he described them this way because one of them called 911 on them. PO Thorn stated that he was not involved

when PO Butler asked for § 87(2)(b)'s information, and he denied using or hearing any profanity being used. PO Thorn stated that he did not recall what § 87(2)(b) was wearing, but he did not recall anything suspicious about his clothing or any bulges on him. When questioned about the UF-250, which stated that the men were searched, PO Thorn stated that as he did not fill it out and he did not know how it was filled out. PO Thorn stated that he did not recall if there were any bags on the back seat of the vehicle, and nothing stood out to him now about anything being wrong with the vehicle.

PO William Butler:

PO William Butler was interviewed at the CCRB on May 8, 2008 (see enclosure # 15a-15d). PO Butler is a § 87(2)(b). He stated that on November 27, 2007, he worked the hours of 1400x0205 and was assigned to anti-crime with Sgt. Siani, PO Thorn and PO Davis. He was dressed in plainclothes and assigned to an unmarked motor vehicle. He did not have any entries in his memo book in regard to this incident. PO Butler did not originally recall this incident. After being provided with a brief description of the incident, PO Butler somewhat recalled it.

On November 27, 2007, PO Butler was on patrol with Sgt. Siani, PO Thorn and PO Davis when they saw a vehicle commit some kind of traffic infraction, though PO Butler did not recall what it was. The officers ran the plate in their system, but nothing came back on it. This led the officers to believe that the car was possibly stolen or that the license plate was a fake. The officers stopped the vehicle to further investigate the situation. All four officers approached the vehicle, though PO Butler did not recall which side he approached. § 87(2)(b) and his passenger, § 87(2)(b) were asked out of their vehicle for the officers' safety. PO Butler explained that he could not specifically recall what led to the individuals to be asked out of the car, but stated that if they were asked out of the car, it was for the officers' safety. While outside of the car, § 87(2)(b) called 911, which led to the officers using the radio to explain that they had a vehicle stopped at the location. PO Butler recalled that § 87(2)(b) was originally "agitated," and explained to the officers that his girlfriend was in law enforcement. The officers ran the plate a second time and this time it checked out. The officers explained the situation to § 87(2)(b) and he seemed to understand. He and § 87(2)(b) were released without being arrested or issued a summons.

PO Butler stated that there were no real problems with § 87(2)(b) and after he was provided with an explanation, he seemed fine. He did not recall anything specific about § 87(2)(b) demeanor during this incident. PO Butler stated that he did not recall his specific role in this incident, or if he frisked anyone or asked § 87(2)(b) for his information. He did not recall anyone being searched and he did not recall what the civilians were wearing. PO Butler stated that he did not recall if the vehicle was searched, but if it was, he did not think he searched it. PO Butler denied hearing PO Thorn use any profanity. He described this incident as short, and stated that nothing stood out except for the plate check and § 87(2)(b) calling 911.

PO Carlos Guzman:

PO Carlos Guzman, assigned to the 32nd Precinct, was interviewed at the CCRB on February 1, 2008 (enclosure 11a-11d). He and his partner PO Stewart Montilla stopped § 87(2)(b) on November 27, 2007 at 10:23 pm for reckless driving at 132nd Street and 5th Avenue, in Manhattan. § 87(2)(b) was compliant and provided his identification. PO Montilla frisked § 87(2)(b) and PO Guzman ran § 87(2)(b)'s name, which came back clean. PO Guzman issued § 87(2)(b) a summons for reckless driving and filled out a UF-250.

Notice of Claim:

The New York City Comptroller's Office stated that they do not have any record of § 87(2)(b) filing a notice of claim in regard to this incident (enclosure 19a-b).

§ 87(2)(b)

CCRB Histories:

§ 87(2)(b)

Neither Sgt. Siani, who has been a member of the NYPD for 11 years, PO Butler, who has been a member for 4 years nor PO Thorn, who has been a member for 14 years, have any CCRB substantiations (enclosures 3-5).

Conclusions and Recommendations

Pleading of Allegations:

As Sgt. Siani was the supervisor on scene and present throughout the incident, both the vehicle stop (**allegation A**) and the vehicle search (**allegation G**) will be pleaded against him. The frisk and search of § 87(2)(b) (**allegations E and F**) will also be pleaded against Sgt. Siani as § 87(2)(b) identified Sgt. Siani in a photo array as the subject officer.

§ 87(2)(b) described the officer who cursed at him as a black male, approximately 6'0", with gold teeth. PO Thorn is a 6'2" black male with gold front teeth and § 87(2)(b) identified him in a photo array as the officer who cursed at him. Thus **allegation B** is pleaded against PO Thorn.

§ 87(2)(b) identified PO Butler from a photograph as the subject officer for the frisk and search (**allegations C and D**). He described PO Butler as a shorter officer with blondish hair, which matches PO Butler's description and in fact, only matches him, as Sgt. Siani has very dark hair and the other two officers involved were both black. PO Thorn stated that he also thought PO Butler was the subject officer, as PO Butler was driving the police vehicle and it is procedure to have the police vehicle operator deal with the civilian vehicle operator. While the officers were inconsistent about this detail, they were interviewed months after the incident and none of them had a very clear recollection of this incident, least of all PO Butler. Thus, the frisk and search of § 87(2)(b) will be pleaded against PO Butler.

§ 87(2)(b) made no allegations against the officer who used the phrase "debadged." He described him as a black male, approximately 5'10", and heavyset. PO Davis acknowledged informing § 87(2)(b) that his vehicle was "debadged," and matches the description given. He is a black male, 6'0", and 200 lbs.

Allegations Not Pleased:

While PO Davis and Sgt. Siani both stated that they frisked § 87(2)(b) these allegations will not be pleaded. § 87(2)(b) alleged that PO Butler was the only officer to frisk him; thus, the frisk allegation will only be pleaded against him.

Undisputed Facts:

The undisputed facts of this case are as follows. Officers stopped § 87(2)(b)'s vehicle because they suspected it was stolen. § 87(2)(b) was asked for his information and eventually both he and his passenger, § 87(2)(b) were asked out of the car. Both men were frisked and § 87(2)(b)'s vehicle was searched. The men were released without being arrested or summonsed.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation A: Sgt. Christopher Siani authorized the stop of the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Based on all of the statements and the stop and frisk report, the officers reasonably suspected § 87(2)(b)'s vehicle as possibly being stolen. § 87(2)(g)

Allegation B: PO Aaron Thorn spoke rudely to § 87(2)(b)

It is unclear if PO Thorn used profanity when speaking with § 87(2)(b) and if so, what type of profanity he used. § 87(2)(g)

Allegation C: PO William Butler frisked § 87(2)(b)

Allegation D: PO William Butler searched § 87(2)(b)

The investigation determined that PO Butler frisked § 87(2)(b) upon instructing him to exit his vehicle. Kamins' New York Search and Seizure Law notes that following a lawful investigative stop, an officer may ask the driver to exit the vehicle, and provide valid identification. However, an officer is not permitted to frisk the driver unless he has a reasonable basis for suspecting that the individual is armed and

may be dangerous (enclosure 1C). Such reasonable suspicion may be based on a bulge in the waistband area, or a bulge in a pocket that resembles a weapon. As further noted in Kamins', "should the officer observe an unidentifiable bulge in the driver's pocket, he would not be justified in frisking the driver, since that type of bulge could be caused by a number of innocuous objects" (enclosure 1D).

§ 87(2)(b) was admittedly upset with the officers, repeatedly questioned their actions, and refused to immediately provide identification, though he stated that he provided his identification prior to exiting the vehicle. These reactions, however, are normal in the course of a traffic stop, and do not signify reasonable suspicion that a person is armed. The stop and frisk report indicated that § 87(2)(b) made "furtive movements" and thus was frisked. Only Sgt. Siani described something that could be considered "furtive movements" in that § 87(2)(b) allegedly grabbed at his jacket multiple times. Sgt. Siani's description was vague and was not corroborated by any other officer, and thus was not credited. While it is credited that § 87(2)(b) was carrying a cell phone in his jacket pocket that may have presented as a bulge, Sgt. Siani did not describe the bulge as looking like a weapon, but rather referred to it simply as, "bulk." PO Davis stated that § 87(2)(b) was frisked because he was wearing a bulky jacket, and as the incident occurred during late November, such clothing would be considered innocuous behavior. Neither the pocket bulge nor the bulky coat are sufficient to establish reasonable suspicion and no extenuating circumstances existed to establish reasonable suspicion to frisk § 87(2)(b).

Once § 87(2)(b) was frisked, the investigation determined that PO Butler subsequently searched him. Kamins' Search and Seizure Law states that "once a frisk is conducted and any reasonable basis for the officer's fear for his safety is abated, the officer cannot continue to search a suspect" (enclosure 11E). However, "an officer may seize the object if he reasonably believes it to be a weapon" (enclosure 1F). As a frisk is a protective measure for officer safety, a search is only justified if the officer feels something he believes is a weapon.

According to the stop and frisk report in this case, the search was conducted based on a "hard object" and no officer testified that he had specific suspicion that § 87(2)(b) was concealing a weapon in his pocket. Considering the number of traffic stops, frisks, and searches that officers conduct, it is reasonable to believe that officers know what a cell phone feels like. Kamins' states that "if the officer knows it is not a weapon, he cannot seize the object" (enclosure 1F). Thus, they could not reach into his pocket for the cell phone. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation E: Sgt. Christopher Siani frisked § 87(2)(b)

Allegation F: Sgt. Christopher Siani searched § 87(2)(b)

Without § 87(2)(b) last name, database checks to locate his contact information could not be conducted. § 87(2)(g)

Allegation G: Sgt. Christopher Siani searched the vehicle in which § 87(2)(b) was an occupant.

Kamins' Search and Seizure Law states that an officer's right to search a vehicle during an investigative stop is limited. Under People v. Mundo, once an individual has been removed from the vehicle, a search of the car can only be conducted where there is an "actual and specific fear" for officer safety based upon a "substantial likelihood that there is a weapon in the car (enclosure 2a-2i)." Here, the officers were unable to articulate actual and specific fear for their safety based upon a substantial likelihood that a weapon was in the vehicle. Thus, they could not search any part of the car.

Sgt. Siani stated that the vehicle was searched for possible weapons and PO Thorn stated that the vehicle was searched for their safety and because there had been a lot of “movement” in the vehicle. However, other than PO Thorn’s statement that § 87(2)(b) was making a lot of “movement” in the car, which he described as § 87(2)(b) “maybe possibly” trying to hide something or place something under his seat (he could not provide a more detailed description of this), no other officer articulated a reason for why they suspected § 87(2)(b) or § 87(2)(b) of concealing a weapon in the vehicle. § 87(2)(g)

§ 87(2)(b) and § 87(2)(b) had been moved away from their vehicle and the officers had already frisked and searched them, finding nothing. § 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: